

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Carter Garfield	Team: Squad #16	CCRB Case #: 202302537	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/25/2023 7:53 PM	Location of Incident: Avenue B and Rockaway Parkway	18 Mo. SOL 9/25/2024	Precinct: 67		
Date/Time CV Reported Mon, 03/27/2023 12:45 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/27/2023 12:45 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An Officer			
2. PO Dia Abdallah	28181	966920	PBBS SU PST
3. SGT Michael Venditti	03739	952318	PBBS SU PST
4. PO Roger Haynes	19893	964047	PBBS SU PST
5. DTS Andreas Sargent	05328	943785	PBBS SU PST
6. PO Nicholas Toner	28652	968845	PBBS SU PST
7. PO Marco Monte	29396	965349	PBBS SU PST

Officer(s)	Allegation	Investigator Recommendation
A . SGT Michael Venditti	Abuse: Sergeant Michael Venditti stopped the vehicle in which § 87(2)(b) and an unknown individual were occupants.	
B . PO Dia Abdallah	Abuse: Police Officer Dia Abdallah frisked § 87(2)(b)	
C . PO Dia Abdallah	Abuse: Police Officer Dia Abdallah searched § 87(2)(b)	
D . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.	
E . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner frisked § 87(2)(b)	
F . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner searched § 87(2)(b)	
G . PO Marco Monte	Discourtesy: Police Officer Marco Monte spoke discourteously to § 87(2)(b)	
H . SGT Michael Venditti	Abuse: Sergeant Michael Venditti questioned § 87(2)(b)	
I . PO Dia Abdallah	Abuse: Police Officer Dia Abdallah searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.	
J . SGT Michael Venditti	Abuse: Sergeant Michael Venditti searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.	

Officer(s)	Allegation	Investigator Recommendation
K . PO Roger Haynes	Abuse: Police Officer Roger Haynes searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.	
L . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner stopped an individual.	
M . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner frisked an individual.	
N . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner searched an individual.	
O . SGT Michael Venditti	Abuse: Sergeant Michael Venditti failed to provide § 87(2)(b) with a business card.	
P . PO Dia Abdallah	Abuse: Police Officer Dia Abdallah failed to provide § 87(2)(b) with a business card.	
Q . PO Roger Haynes	Abuse: Police Officer Roger Haynes failed to provide § 87(2)(b) with a business card.	
R . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner failed to provide § 87(2)(b) with a business card.	
S . PO Nicholas Toner	Abuse: Police Officer Nicholas Toner failed to provide an individual with a business card.	
T . PO Marco Monte	Abuse: Police Officer Marco Monte improperly used his/her/their body-worn camera.	
U . An Officer	Abuse: An officer interfered with § 87(2)(b) use of a recording device.	
V . An Officer	Abuse: An officer damaged § 87(2)(b) property.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

Case Summary

On March 27, 2023, § 87(2)(b) called the CCRB and filed the following complaint on behalf of § 87(2)(b) and an unknown individual.

On March 25, 2023, at approximately 7:53 p.m., at the intersection of Avenue B and Rockaway Parkway in Brooklyn, § 87(2)(b) was driving with an unknown individual when they were pulled over by six officers from Patrol Borough Brooklyn South: Sgt. Michael Venditti, PO Dia Abdallah, Det. Andreas Sargent, PO Roger Haynes, PO Nicholas Toner, and PO Marco Monte (**Allegation A: Abuse of Authority**, § 87(2)(g))

PO Abdallah frisked and searched § 87(2)(b) (**Allegations B, C: Abuse of Authority**, § 87(2)(g)) PO Toner entered § 87(2)(b) vehicle, retrieved a coat, then frisked and searched the coat (**Allegations D: Abuse of Authority**, § 87(2)(g)) (**Allegation E: Abuse of Authority**, § 87(2)(g)) (**Allegation F: Abuse of Authority**, § 87(2)(g)) PO Monte said to § 87(2)(b) “Nobody is gonna fucking kill you, man, relax. What the fuck.” (**Allegation G: Discourtesy**, § 87(2)(g))

Sgt. Venditti questioned § 87(2)(b) (**Allegation H: Abuse of Authority**, § 87(2)(g)) PO Abdallah, Sgt. Venditti, and PO Haynes proceeded to search § 87(2)(b) car (**Allegations I, J, K: Abuse of Authority**, § 87(2)(g)) PO Toner stopped, frisked, and searched the unknown individual (**Allegations L, M, N: Abuse of Authority**, § 87(2)(g))

Sgt. Venditti, PO Abdallah, PO Haynes, and PO Toner failed to offer § 87(2)(b) a business card (**Allegations O, P, Q, R: Abuse of Authority**, § 87(2)(g)) PO Toner failed to provide the unknown individual with a business card (**Allegation S: Abuse of Authority**, § 87(2)(g))

PO Monte failed to properly activate his BWC during this incident (**Allegation T: Abuse of Authority**, § 87(2)(g))

§ 87(2)(b) alleged that an officer interfered with him recording the incident (**Allegation U: Abuse of Authority**, § 87(2)(g)) An officer allegedly damaged § 87(2)(b) TV monitor in his car during the search (**Allegation V: Abuse of Authority**, § 87(2)(g))

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

No summons or arrest resulted from this incident.

The investigation is in possession of six BWC videos pertaining to this incident (**BRs 01 – 06**). The investigation is in possession of no additional video.

On July 14, 2023, this complaint was reassigned from former Investigator Dylan Brenner to Supervising Investigator Garfield.

Findings and Recommendations

Allegation (A) Abuse of Authority: Sergeant Michael Venditti stopped the vehicle in which § 87(2)(b) and an unknown individual were occupants.

§ 87(2)(b) (**BR 07**) stated that he was driving with three or four friends when he observed two unmarked RMPs stop a vehicle (identified by the investigation as driven by § 87(2)(b)). § 87(2)(b) decided to pull over and record the interaction on his cellphone. He observed § 87(2)(b) in the front seat, a female passenger in the front passenger seat, and four officers in each RMP, all of whom exited their vehicles and approached § 87(2)(b) vehicle. § 87(2)(b) stated that § 87(2)(b) vehicle windows appeared tinted. He did not observe any other vehicle infractions.

§ 87(2)(b) became uncooperative with the investigation and did not provide the cellphone video he took of this incident nor the names of the additional witnesses.

The investigation was unable to obtain a statement from § 87(2)(b) nor was the investigation able to identify the female passenger with him.

Sgt. Venditti (**BR 08**) testified that he was working a Neighborhood Safety assignment with Det. Sargent, PO Abdallah, PO Monte, PO Haynes, and an additional officer he could not recall (identified by the investigation as PO Toner). They were working as a team in two vehicles. Sgt. Venditti testified that he and additional officers (he could not recall who) observed § 87(2)(b) vehicle with windows that were illegally tinted. He further testified that an officer ran § 87(2)(b) license plate and that the plate did not match the vehicle, which indicated to him that the vehicle might be stolen. There were no additional reasons for pulling over § 87(2)(b).

PO Abdallah (**BR 09**), PO Haynes (**BR 10**), and PO Toner (**BR 11**) all provided testimony generally consistent with Sgt. Venditti's concerning the reasons for the vehicle stop, though PO Monte (**BR 12**) did not recall the incident. None of the officers interviewed recalled conducting a tint check of § 87(2)(b) windows.

The investigation was able to make a determination without testimony from Det. Sargent.

In PO Abdallah's BWC (**BR 02**), at 00:00, PO Abdallah is seen typing on a cellphone while sitting in the backseat of an RMP, but it is unclear what he is typing. At 00:57, he exits his RMP and approaches § 87(2)(b) vehicle. At 00:58, a piece of paper is visible in the rear window of § 87(2)(b) vehicle. At 1:00, PO Abdallah is seen shining his flashlight on § 87(2)(b) driver-side rear passenger window, but the interior of the vehicle is not visible as the windows appear to be tinted. At 1:40, PO Abdallah informs § 87(2)(b) that he was stopped for multiple violations, one of which being tinted windows. § 87(2)(b) replies that he purchased the car like that. PO Abdallah then informs § 87(2)(b) that his license plates do not "come back" to his vehicle. § 87(2)(b) replies that he was not able to remove the license plate because he does not have a screwdriver but has his temporary license plates attached the rear window.

In PO Toner's BWC (**BR 04**), at 15:13, § 87(2)(b) rear license plate is clearly visible: § 87(2)(b).

All other BWC footage is consistent with PO Abdallah's BWC (**BRs 01, 03-06**).

A warrant audit search request (BR 13) found that PO Abdallah ran a search for license plate § 87(2)(b) at 7:51:55 p.m., which corresponds with the 00:00 mark on his BWC where he is seen on his cellphone.

A DMV search of license plate number § 87(2)(b) yielded negative results for a vehicle registered to that plate (BR 38).

NYC Vehicle Traffic Law § 375 (12-a) (BR 14) states that seventy percent or more of light from the outside must pass through a vehicle window to be legal.

NYS Vehicle Traffic Law § 402 (1-a) (BR 15) states that no person shall operate or drive a motor vehicle having displayed thereon number plates not proper for such vehicle, and that the failure to produce the certificate of registration or registration renewal stub of a vehicle shall be presumptive evidence of displaying number plates not proper for the vehicle.

Given that Sgt. Venditti was the highest ranking officer on scene, **Allegation A** is pleaded against him.

Despite no tint check conducted on scene or any further investigation into § 87(2)(b) improperly registered license plates, BWC shows officers informing § 87(2)(b) of these traffic violations and he is heard providing reasons as to why they have been committed, as opposed to denying them. Furthermore, the DMV search confirmed that the license plate was not registered to a vehicle. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Dia Abdallah frisked § 87(2)(b)

Allegation (C) Abuse of Authority: Police Officer Dia Abdallah searched § 87(2)(b)

It is undisputed by all parties that PO Abdallah frisked and searched § 87(2)(b)

In PO Abdallah's BWC (BR 02), at 3:50, PO Abdallah asks § 87(2)(b) to step out of the vehicle and asks him if he has anything "sharp." § 87(2)(b) replies that he does and that it is in his pocket. While not seen on video, PO Abdallah appears to enter § 87(2)(b) left pants pocket to retrieve the knife. PO Abdallah then says to § 87(2)(b) "Anything else on you you're not supposed to have?" § 87(2)(b) says no. PO Abdallah responds, "Okay, I'm just gonna check you out real quick, okay?" As he says this, PO Abdallah proceeds to frisk § 87(2)(b) rear and front pants pockets. At 4:12, PO Abdallah enters § 87(2)(b) front-left pocket and retrieves a pair of car keys. At 5:03, PO Abdallah is holding a stack of cards and flips through them before returning them to § 87(2)(b) pocket. At 5:14, PO Abdallah pulls out various cards from § 87(2)(b) back-left pocket. He looks at the cards and then returns the cards to the pocket. PO Abdallah then frisks § 87(2)(b) legs.

PO Abdallah's testimony (BR 09) was generally consistent with his BWC with the following exceptions. He explained that he searched § 87(2)(b) because § 87(2)(b) said he had a knife on his person. PO Abdallah made no independent observations of § 87(2)(b) such as any noticeable bulges, that indicated to him that § 87(2)(b) was carrying any sort of weapon. PO Abdallah entered and searched every pocket on § 87(2)(b) person, including his four pants pockets, and then frisked § 87(2)(b) pants down to his shoes. He testified that he frisked and

searched § 87(2)(b) because § 87(2)(b) said he had a knife on his person. PO Abdallah then moved § 87(2)(b) to the rear of the vehicle.

In *People v. Robinson*, 125 A.D.2d 259, 259 (BR 16), the court ruled that to justify a pat down of the driver or a passenger during a traffic stop, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

In *People v. Sanchez*, 38 N.Y.2d 72 (BR 17) officers must reasonably articulate particular facts indicating that an individual possesses a weapon within their pocket to justify the search of a pocket. Specifically, an officer can conduct a limited search of an area if they feel a hard object and can provide an articulable reason to believe that said object poses a dangerous threat.

While § 87(2)(b) acknowledged having something “sharp” on him, he did not state that he had a knife or something specifically illegal. Additionally, after PO Abdallah retrieved the knife, § 87(2)(b) told PO Abdallah he had no other weapons on him. PO Abdallah testified that he then frisked and searched § 87(2)(b) entire person because of the knife. Given that § 87(2)(b) had been pulled over for vehicle infractions and was not suspected of criminality, along with the fact that PO Abdallah made no observations that § 87(2)(b) was carrying any additional weapons § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (D) Abuse of Authority: Police Officer Nicholas Toner searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.

Allegation (E) Abuse of Authority: Police Officer Nicholas Toner frisked § 87(2)(b)

Allegation (F) Abuse of Authority: Police Officer Nicholas Toner searched § 87(2)(b)

These allegations derive from BWC footage. In PO Abdallah’s BWC (BR 02), at 7:10, § 87(2)(b) is standing at the rear of his vehicle and asks if he can put his coat on. PO Abdallah asks him where his coat is, and § 87(2)(b) says it is inside the car. PO Abdallah tells § 87(2)(b) that they will get it for him.

The investigation was unable to obtain a statement from § 87(2)(b)

In PO Toner’s BWC (BR 04), at 6:52, PO Toner says, “Right here? I’ll grab it.” PO Toner then reaches through the rear passenger window of § 87(2)(b) vehicle and retrieves a coat. He frisks the pockets. He unzips an interior pocket of the coat, but he is not seen searching the pockets on video. At 7:38, he hands the coat to § 87(2)(b)

PO Toner (BR 11) testified that he retrieved § 87(2)(b) coat from the car upon § 87(2)(b) request. He did not articulate why he did not allow § 87(2)(b) to retrieve his coat himself. He did not enter § 87(2)(b) vehicle for any other reason. He testified that he then frisked the coat for officers’ safety. He made no specific observations of the jacket prior to frisking it. Other than the knife that § 87(2)(b) had on his person, there was no other indication to PO Toner that § 87(2)(b) might be armed or dangerous.

PO Toner testified that when he frisked the coat he “might have felt something” inside of a pocket during the frisk and “might have” searched the pocket. He was “not entirely sure” what he felt

when he frisked the pocket and testified that he “might have” felt some sort of hard object. He provided no description as to what he thought the object felt like. He did not pull anything out of any pockets and could not recall what was in the pocket.

None of the officers interviewed provided testimony as to whether or not they observed PO Toner frisk or search § 87(2)(b) coat.

Per *People v. Gonzalez*, 39 N.Y.2d 122 (BR 18), all consents to search must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent.

In *People v. Robinson*, 125 A.D.2d 259, 259 (BR 16), the court ruled that to justify a pat down of the driver or a passenger during a traffic stop, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

In *People v. Sanchez*, 38 N.Y.2d 72 (BR 17) officers must reasonably articulate particular facts indicating that an individual possesses a weapon within their pocket to justify the search of a pocket. Specifically, an officer can conduct a limited search of an area if they feel a hard object and can provide an articulable reason to believe that said object poses a dangerous threat.

Given that § 87(2)(b) had requested for his coat during the stop, that officers offered to get his coat from the car, and that § 87(2)(b) did not protest officers doing so, and that PO Toner did not appear to search anywhere inside the vehicle, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

However, other than a knife that § 87(2)(b) had previously admitted to officers he had on him, PO Toner had no indication that § 87(2)(b) who had been stopped solely for VTL infractions, was armed or dangerous. PO Toner made no observations of the coat prior to frisking it that indicated to him that a weapon might be in the coat. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Although this was not alleged, BWC captures PO Toner audibly unzipping a pocket of § 87(2)(b) coat, and PO Toner said he “might have” searched § 87(2)(b) coat. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (G) Discourtesy: Police Officer Marco Monte spoke discourteously to § 87(2)(b)

§ 87(2)(b)

This allegation derives from BWC. In PO Monte’s BWC (BR 06), at 7:12, § 87(2)(b) is standing at the rear of his vehicle and is surrounded by officers. PO Monte asks § 87(2)(b) if there is anything in the car and says that § 87(2)(b) looks “mad nervous.” § 87(2)(b) responds that there is nothing in the car and that he does not want to get killed. At 7:19, PO Monte says to § 87(2)(b) “Nobody is gonna fucking kill you, man, relax. What the fuck.”

PO Monte (BR 12) testified that he said this to § 87(2)(b) because he wanted to “assure” § 87(2)(b) that he needed to calm down. There were no other reasons he said this.

Patrol Guide Procedure 200-02 (BR 19) states that officers are to maintain a higher standard of integrity than is generally expected of others and to treat every citizen with compassion, courtesy, professionalism, and respect.

In DCT Case 2017-17005 (BR 39), the court held that discourteous language is excusable in chaotic situations in which there is an immediate need to maintain order.

BWC confirms that § 87(2)(b) was doing nothing more than speaking with officers next to his vehicle at the time that PO Monte said to him, “Nobody is gonna fucking kill you, man, relax. What the fuck.” § 87(2)(g)

Allegation (H) Abuse of Authority: Sergeant Michael Venditti questioned § 87(2)(b)

This allegation derives solely from BWC. In Sgt. Abdallah’s BWC (BR 02), at 8:10, Sgt. Venditti asks § 87(2)(b) if he has any bazookas or grenades in his vehicle. § 87(2)(b) replies no.

Sgt. Venditti (BR 08) testified that he asks civilians this during car stops to see how they would react to him asking something as “ridiculous” as that. He testified that it is a tactic he has developed over the years and it is not because he truly believed § 87(2)(b) had bazookas or grenades in his vehicle. Sgt. Venditti did not make any observations on scene during this incident that indicated that § 87(2)(b) had bazookas or grenades on him or in his vehicle, nor did he recover any during this incident.

According to *People v. De Bour*, 40 N.Y.2d 210 (BR 20) officers may ask accusatory questions if they have founded suspicion that criminal activity is present.

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Dia Abdallah searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.

Allegation (J) Abuse of Authority: Sergeant Michael Venditti searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.

Allegation (K) Abuse of Authority: Police Officer Roger Haynes searched the vehicle in which § 87(2)(b) and an unknown individual were occupants.

§ 87(2)(b) (BR 07) stated that officers asked § 87(2)(b) if they could search his car, to which he replied no and asked if he had a choice. Officers told him that he did not have a choice and proceeded to search the entire car.

The investigation was unable to obtain a statement from § 87(2)(b) or from the female individual in his vehicle.

PO Abdallah (BR 09) and Sgt. Venditti (BR 08) consistently testified that PO Abdallah asked § 87(2)(b) if officers could search § 87(2)(b) car, to which § 87(2)(b) shrugged his shoulders in response. PO Abdallah then told § 87(2)(b) that he needed a verbal response, to which § 87(2)(b)

§ 87(2)(b) said yes. PO Abdallah testified that he did not explain to § 87(2)(b) that he had the right to refuse consent other than telling § 87(2)(b) he needed a “yes or no” answer.

Sgt. Venditti, however, testified that he told § 87(2)(b) that he could refuse consent if he wanted. Sgt. Venditti testified that § 87(2)(b) acknowledged what he said regarding consent but he was unable to recall how. He testified that he knew § 87(2)(b) acknowledged his statement because “he said it.” Sgt. Venditti did not remember if or how § 87(2)(b) responded to this statement.

PO Abdallah’s BWC (**BR 02**) is consistent with his statement. At 8:45, PO Abdallah asks § 87(2)(b) if they can search his car. § 87(2)(b) does not respond verbally and appears to shrug. PO Abdallah tells him he needs a yes or no response. PO Haynes also says, “I need verbal,” at the same time as PO Abdallah. § 87(2)(b) says yes. PO Haynes then says, “Thank you,” and walks toward the car. Officers do not explain consent to § 87(2)(b). Sgt. Venditti is heard saying, “No” after PO Haynes’ “thank you,” but it is quieter than the previous conversation. § 87(2)(b) does not appear to react to Sgt. Venditti’s “No” nor does he say anything. At 9:00, Sgt. Venditti and PO Haynes enter § 87(2)(b) vehicle from the driver’s side. At 13:10, PO Abdallah enters § 87(2)(b) vehicle from the driver’s seat and looks through various areas in the vehicle with PO Haynes.

In Sgt. Venditti’s BWC (**BR 05**), at 8:55, immediately after PO Haynes says, “Thank you,” Sgt. Venditti says, “You can say no.” He is standing approximately fifteen feet from § 87(2)(b) and PO Haynes is standing in between them when he says this. § 87(2)(b) does not respond or react to Sgt. Venditti’s statement.

PO Haynes (**BR 11**) testified that he could not hear any of the conversation with § 87(2)(b) regarding consent to search the vehicle.

A request for any consent to search forms prepared by Patrol Borough Brooklyn South on the day of the incident were returned by NYPD Legal with negative results (**BR 29**).

Per *People v. Gonzalez*, 39 N.Y.2d 122 (**BR 18**), all consents to search must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances.

NYC Administrative Code § 14-173 (**BR 40**) states that officers, when obtaining consent from a civilian to search their vehicle, the officer must articulate their request in plain and simple language in a non-threatening manner, that the person is being asked to consent to such search voluntarily, knowingly, and intelligently, and explaining that if the person refuses then the search will not be conducted. Section (a)(3) specifically states that officers must affirm that the person understands the information communicated to them.

There is no indication on BWC that § 87(2)(b) heard Sgt. Venditti’s statement, “You can say no.” PO Abdallah is the officer standing closest to § 87(2)(b) when Sgt. Venditti makes this statement, and the statement is not entirely audible on his BWC. Furthermore, § 87(2)(b) also does not react or respond in any way to Sgt. Venditti’s statement. The statement, heard on Sgt. Venditti’s BWC, is said at the same time PO Haynes says, “Thank you,” and is not as loud. PO Haynes is also standing in between Sgt. Venditti and § 87(2)(b) at the time. The investigation, therefore, determined that § 87(2)(b) did not hear Sgt. Venditti’s statement.

§ 87(2)(g)

Allegation (L) Abuse of Authority: Police Officer Nicholas Toner stopped an individual.
Allegation (M) Abuse of Authority: Police Officer Nicholas Toner frisked an individual.
Allegation (N) Abuse of Authority: Police Officer Nicholas Toner searched an individual.

§ 87(2)(b) (BR 02) stated that an officer (identified by the investigation as PO Toner) had the female passenger exit § 87(2)(b) vehicle, where he proceeded to frisk and search her pockets. § 87(2)(b) could not see if PO Toner removed anything from her pockets. PO Toner then escorted the female individual to the rear of the vehicle.

§ 87(2)(b) became uncooperative with the investigation and did not provide any contact information for the female individual.

The investigation was unable to obtain a statement from § 87(2)(b)

In PO Toner's BWC (BR 04), at 8:30, after officers ask to search § 87(2)(b) vehicle, PO Toner opens the front passenger door where the female passenger is seated and asks her to step out of the vehicle. At 8:43, she steps out, and PO Toner asks her if she has anything sharp on her. She replies she does not. PO Toner then says, "Mind if I check?" She replies, "Yes, I'd rather a woman." PO Toner replies, "Okay, I'm saying – you can say yes, you can say no." She turns around and speaks with § 87(2)(b) who is standing on the other side of the vehicle. She says to him that the officers wants to search her and that she wants a female officer to do so. PO Toner says that the choice is up to her. She replies, "No, it isn't," and unzips her coat. PO Toner then says, "It's okay?" The female passenger says, "Go ahead."

PO Toner (BR 11) testified that he made no physical observations, such a visible bulge, on the female that suggested to him that she was carrying a weapon. He added that because § 87(2)(b) license plates were not properly registered, there was a concern that § 87(2)(b) was operating a stolen vehicle, and stolen vehicles often involve weapons. PO Toner had no suspicion of any criminality regarding the female other than her being in a vehicle that was suspected to be stolen. There was no other indication or concern that the female individual might be carrying a weapon. After asking the female to step out of the vehicle, PO Toner asked if he could search her and told her that she could say no. She told him that she wanted a female officer. PO Toner then asked again and told her a second time that she could refuse if she wanted to. PO Toner testified that the female then "gave yes as an answer." He proceeded to then search the female individual's coat pockets, and then frisked her arms and back. He testified that he searched her coat pockets since she gave consent, then frisked her person for everyone's safety. He did not pull anything out of the female pockets.

When asked why he asked for consent to search the female passenger a second time when she was heard refusing consent the first time, PO Toner testified that she did not refuse because she said, "Yes, can I have a female." PO Toner reiterated that her first answer was "convoluted" and that she "didn't necessarily say no."

A request for any consent to search forms prepared by Patrol Borough Brooklyn South on the day

of the incident were returned by NYPD Legal with negative results (**BR 29**).

Per *People v. Gonzalez*, 39 N.Y.2d 122 (**BR 18**), all consents to search must be a free and unconstrained choice. Official coercion, even if deviously subtle, nullifies apparent consent. Whether consent has been voluntarily given or is only a yielding to overbearing official pressure must be determined from the circumstances.

In *People v. Robinson*, 125 A.D.2d 259, 259 (**BR 16**), the court ruled that to justify a pat down of the driver or a passenger during a traffic stop, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

In *People v. Sanchez*, 38 N.Y.2d 72 (**BR 17**) officers must reasonably articulate particular facts indicating that an individual possesses a weapon within their pocket to justify the search of a pocket. Specifically, an officer can conduct a limited search of an area if they feel a hard object and can provide an articulable reason to believe that said object poses a dangerous threat.

In *People v. Hollman*, 79 N.Y.2d 181 (**BR 41**), the court ruled that an officer may only ask nonthreatening questions and cannot request permission to search when requesting information based on an objective credible reason.

Patrol Guide Procedure 212-11 (**BR 21**) states that if an officer has reasonable suspicion that an individual has committed a crime, they may stop and detain the person for the purpose of conducting a criminal investigation.

Because PO Toner frisked and searched the female passenger, and because PO Toner testified that she was not free to leave until after the vehicle stop was concluded, the investigation added a stop allegation against PO Toner.

Other than officers' general concern that § 87(2)(b) vehicle might have been stolen, and PO Toner's experience with stolen vehicle incidents also involving weapons, PO Toner had no indication that the female in § 87(2)(b) vehicle was armed or dangerous. PO Toner also did not suspect her of criminality, beyond being a passenger of a vehicle that was only suspected to be stolen at the time due to the improper plates, § 87(2)(g)

Furthermore, PO Toner made no physical observations of her person that indicated to him that she was carrying a weapon. § 87(2)(g)

Given that the female was only a passenger in a vehicle that was stopped for VTL infractions, PO Toner may only request information from her based on an objective credible reason § 87(2)(g)

Additionally, BWC confirms that when PO Toner asked the female individual if she would mind if he searched her, she replied yes. PO Toner then testified that he asked her a second time as her response was "convoluted" because "she did not necessarily say no." BWC confirms that after this exchange, PO Toner told the female individual that the choice was hers, and she replied that it was not. § 87(2)(g)

Furthermore, PO Toner testified that he made no physical observations that indicated that the female individual was carrying a weapon. § 87(2)(g)

§ 87(2)(g)

Allegation (O) Abuse of Authority: Sergeant Michael Venditti failed to provide § 87(2)(b) with a business card.

Allegation (P) Abuse of Authority: Police Officer Dia Abdallah failed to provide § 87(2)(b) with a business card.

Allegation (Q) Abuse of Authority: Police Officer Roger Haynes failed to provide § 87(2)(b) with a business card.

Allegation (R) Abuse of Authority: Police Officer Nicholas Toner failed to provide § 87(2)(b) with a business card.

Allegation (S) Abuse of Authority: Police Officer Nicholas Toner failed to provide an individual with a business card.

It is undisputed that Sgt. Venditti, PO Abdallah, PO Haynes, and PO Toner all failed to provide a business card to § 87(2)(b) during this incident. It is also undisputed that PO Toner did not provide the female passenger with a business card.

Sgt. Venditti (**BR 08**) could not remember if he or one of the other officers on scene provided § 87(2)(b) with a business card. He testified that as long as “someone” offers a business card, it is not required for every officer on scene to do so.

PO Abdallah (**BR 09**) testified that it was unnecessary for him to provide a business card because PO Toner offered one. He said PO Toner offered § 87(2)(b) a business card by saying, “Contact card available,” to which § 87(2)(b) did not say anything in reply. PO Abdallah knew that § 87(2)(b) “acknowledged” the offer for a business card but was unable to describe how § 87(2)(b) did so.

PO Haynes (**BR 10**) testified that he offered a business card to § 87(2)(b) by saying, “Contact card available,” and that § 87(2)(b) replied saying, “Nah, I’m all good.”

PO Toner (**BR 11**) testified that he offered a business card to the female passenger by saying, “Contact card available.” The female passenger shook her head in reply and walked away. He did not offer a business card to § 87(2)(b).

In PO Haynes’ BWC (**BR 03**), at 15:08, § 87(2)(b) walks past PO Haynes. After he passes PO Haynes, PO Haynes says, “Contact card available, alright?” § 87(2)(b) is seen stepping into his vehicle as PO Haynes says this. § 87(2)(b) does not make any physical movement to indicate he heard PO Haynes nor does he say anything.

In PO Toner’s BWC (**BR 04**), at 15:08, the female passenger walks past PO Toner and around a parked vehicle. Right after she passes him, PO Toner says, “Contact card available, ma’am.” The female passenger is not visible on the other side of the parked vehicle when he says this and no reply is heard on video. He does not offer § 87(2)(b) a business card.

Administrative Guide 304-11 (BR 28) states that officers are required to offer a business card after frisks or searches of persons or vehicle searches.

§ 87(2)(g)

§ 87(2)(g) BWC does not show § 87(2)(b) or the female individual acknowledging these statements in any way.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) Sgt. Venditti, PO Abdallah, PO Haynes, and PO Toner all searched § 87(2)(b) vehicle, all were required to offer § 87(2)(b) a business card. Additionally, given that PO Toner frisked the female passenger, he was required to offer her a business card as well. § 87(2)(g)

Allegation (T) Abuse of Authority: Police Officer Marco Monte improperly used his body-worn camera.

PO Monte's BWC (BR 06), at 00:00, begins approximately three minutes into the stop - § 87(2)(b) is in his vehicle and holding papers while officers are standing next to the car.

PO Monte (BR 12) testified that he activated his BWC when he first learned what the reason for the car stop was. He testified that he did not activate his BWC upon stepping out of his vehicle because he needed to "assess the scene" first. There was no other reason why he did this.

Patrol Guide Procedure 212-123 (BR 22) requires that officers activate their BWC prior to engaging in vehicle stops.

PO Monte, despite not knowing the reason for the vehicle stop, knew he was participating in a vehicle stop. § 87(2)(g)

Allegation (U) Abuse of Authority: An officer interfered with § 87(2)(b) use of a recording device.

Allegation (V) Abuse of Authority: An officer damaged § 87(2)(b) property.

§ 87(2)(b) (BR 07) alleged that during the vehicle search, he was recording the incident on his cellphone when an officer approached him and told him he was not allowed to record the incident. He also alleged that after officers left the scene, he spoke to § 87(2)(b) who told him that an officer had damaged the monitor in his vehicle during the search.

Det. Sargent, PO Abdallah, PO Haynes, and PO Toner's BWC (BRs 01 – 4) all comprehensively capture this vehicle stop and vehicle search, all from different vantage points. At no point is any civilian seen approaching the scene, nor is any officer heard telling any civilians that they cannot record the stop. Additionally, no television monitor is seen in § 87(2)(b) vehicle during the search.

BWC confirms that no officer interfered with § 87(2)(b) use of a recording device nor damage § 87(2)(b) property, as alleged. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint in which § 87(2)(b) has been a party (BR 23).
- This is the first CCRB complaint in which § 87(2)(b) has been a party (BR 24).
- Absent any contact information, the investigation was unable to obtain the female individual's CCRB history.
- PO Abdallah has been a member of service for four years and has been listed as subject in one CCRB complaint and three allegations, none of which were substantiated.
 - § 87(2)(g)
- Sgt. Venditti has been a member of service for eleven years and has been listed as a subject in seven CCRB complaints and sixteen allegations, none of which were substantiated.

